

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GILVERTO HERRERA, *et al.*,) Civil No. 14-CV-1844-BTM (WVG)
v.)
ALLIANCEONE RECEIVABLE)
MANAGEMENT, INC., *et al.*,)
Plaintiffs,)
Defendants.)
DISCOVERY ORDER
[DOC. NO. 67]

I. INTRODUCTION

On March 21, 2016, Plaintiffs Gilverto and Claudia Herrera (“Plaintiffs”) and Defendant AllianceOne Receivable Management, Inc. (“Defendant”) filed a Joint Motion for Determination of Discovery Dispute (“Joint Motion”) related to Plaintiffs’ Requests for Production of Documents (“RFPs”), Set Two, which were served on Defendant on December 11, 2015. (Doc. No. 67; Doc. No. 61 at 1-2.) Plaintiffs’ RFPs seek production of, among other items, Defendant’s employee training manuals and Defendant’s policies and procedures regarding a number of issues. Id. On January 13,

1 2016, Defendant served its RFP responses. (Doc. No. 61 at 2.) On February 9, 2016,
 2 Defendant produced additional responsive documents.^{1/} *Id.*

3 The Court has identified several problems with Plaintiffs' requests and
 4 Defendant's responses. Notably, as Defendant argues, Plaintiffs have adjusted the
 5 target of several RFPs in their attempt to argue their position and clarify their initial
 6 requests. However, neither Defendant nor the Court can make assumptions about what
 7 information Plaintiffs really meant to obtain through their RFPs. Plaintiffs must be
 8 explicit and precise about the information they seek in the actual RFP, not simply in the
 9 subsequent argument to compel the information.

10 As for Defendant, many of its objections and responses violate the spirit and
 11 intent of the Federal Rules of Civil Procedure ("Rules"), case law, and this Court's
 12 Civil Chambers Rules ("Chambers Rules"), which prohibit boilerplate objections and
 13 conditional responses. Judge Gallo's Chambers Rules, Appendix B ("Waiver of
 14 Discovery Objections"). The Court is dismayed that Defendant's justification for its
 15 objections, as asserted in the Joint Motion, was not explained in its actual responses.
 16 Despite stating that every request was objectionable for various reasons, Defendant did
 17 not even attempt to demonstrate how or why the requests were vague, ambiguous,
 18 overbroad, or irrelevant. This Court's Chambers Rules unequivocally instruct against
 19 boilerplate objections or conditional waivers. Defendant failed to properly object
 20 despite the Court's Chambers Rules, case law, and the Federal Rules of Civil
 21 Procedure.

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^{1/}On February 18, 2016, the Court granted the parties' First Joint Motion to Extend the Deadline to Resolve Discovery Dispute, allowing the parties until February 29, 2016 to schedule a joint telephone conference with the court. (Doc. No. 60.) On March 1, 2016, the Court granted the parties' Second Joint Motion to Extend the Deadline to Resolve Discovery Dispute, allowing the parties until March 11, 2016 to schedule a joint telephone conference with the court. (Doc. No. 62.) On March 14, 2016, the parties jointly notified the Court of their continuing dispute. (Doc. No. 65.)

1 After reviewing Plaintiffs' discovery requests and Defendants' objections, and
 2 considering the arguments asserted by both parties in the Joint Motion, the Court issues
 3 the rulings below.

4 **II. DISCUSSION AND RULING**

5 **A. RFP NO. 39**

6 **Request No. 39:** "Produce all of defendant's policies and procedures
 7 regarding the verification of a debt."

8 **Response to Request No. 39:** "Defendant objects to this Request on the
 9 grounds that the phrases "policies and procedures" and "regarding the
 10 verification of a debt" are vague and ambiguous. Defendant further
 11 objects to this Request on the grounds that it is overbroad and seeks
 12 information that is neither relevant to the subject matter of this lawsuit,
 13 nor proportionally tailored to the reasonable needs of the case. There is no
 14 "debt" or "consumer debt" at issue as those terms are defined by 15
 15 U.S.C. § 1692a(5) and California Civil Code §1788.2(f), respectively.
 16 Defendant also objects to this Request to the extent that it seeks propri-
 17 etary information, trade secrets, or information subject to protective
 18 orders, confidentiality agreements, or statutory provisions that bar the
 19 disclosure of that information without the consent of third parties, or
 20 information protected by the attorney-client privilege or the attorney
 21 work-product doctrine. Defendant objects to this Request to the extent that
 22 it is duplicative of other Requests previously responded to by Defendant
 23 in this action. Subject to and without waiving the foregoing, Defendant
 24 will produce non-privileged business records in its possession, custody or
 25 control, responsive to this request, that are relevant to the claims and
 26 defenses in this lawsuit and that have not previously been produced."

27 **Plaintiffs' Argument^{2/}**

28 Defendant's objections are baseless. The parties have signed a Protective
 1 Order. (Doc. 24 and 26.) Further, this Request deals with the policies and procedures
 2 to verify or validate the identity of the debtor and other information regarding the debt.
 3 In this matter, all three traffic tickets were issued to drivers with completely different
 4 name. The owner of the cars was Gilberto Gamino Herrera, who has a different name,
 5 address, date of birth, height, and weight than plaintiff. If Defendant has any policies
 6 and procedure to validate the identity of the debtor, then Plaintiff need to examine it.
 7 If there are no policies and procedures, then Defendant must state it.

2/ All of the parties' arguments are copied verbatim from their Joint Motion.

1 **Defendant's Argument**

2 As Plaintiffs' explanation above makes clear, Defendant's objection that this
 3 Request is vague and ambiguous is well-taken. Plaintiffs initially requested information
 4 regarding "verification of the debt." Now, however, they explain that they seek
 5 information "to verify or validate the identity of the debtor." This is not what the
 6 request sought, which was information regarding "a debt." In any event, Defendant has
 7 produced responsive documents. See AO 1-34, 64-67, 68-71, 81-84, 271-275, 357-361,
 8 516-528, 529-543 and 544-556. There is no basis to compel production.

9 **Court's Ruling on RFP No. 39**

10 Defendant's objection is **SUSTAINED** on the basis of Defendant's specific
 11 objection that, "[t]here is no 'debt' or 'consumer debt' at issue as those terms are
 12 defined by 15 U.S.C. § 1692a(5) and California Civil Code §1788.2(f), respectively."
 13 Logically, if there is no debt as defined by the statutes, then there are no documents to
 14 produce.

15 It does appear, as Defendant contends, that Plaintiffs have readjusted the focus
 16 of this RFP in their argument to the Court. Although RFP No. 39 explicitly seeks
 17 Defendant's policies and procedures regarding the verification of a debt, Plaintiffs now
 18 argue that they seek policies and procedures to validate the identity of the debtor. The
 19 Court will not compel Defendant to produce documents related to the identity of the
 20 debtor in response to this RFP, as this is not what Plaintiffs initially requested.
 21 Plaintiffs must be precise about what information they seek when crafting their RFPs.
 22 Defendant is not expected to be clairvoyant.

23 While Defendant's objection to RFP No. 39 is sustained on the sole basis
 24 explained above, the remainder of Defendant's objections to this RFP are **OVER-**
 25 **RULED**. Defendant has provided a catalogue of boilerplate objections, including
 26 noting that this request is vague, ambiguous, overbroad, duplicative, and seeks
 27 irrelevant information, but has failed to provide any explanation for its objections.
 28 Where the responding party provides a boilerplate or generalized objection, the

1 “objections are inadequate and tantamount to not making any objection at all.” Walker
 2 v. Lakewood Condominium Owners Associations, 186 F.R.D. 584, 587 (C.D.Cal.
 3 1999); see Ritacca v. Abbott Laboratories, 203 F.R.D. 332, 335 n.4 (N.D.Ill. 2001)
 4 (“As courts have repeatedly pointed out, blanket objections are patently im-
 5 proper,...[and] we treat [the] general objections as if they were never made.”). The
 6 responding party must clarify, explain, and support its objections. Anderson v. Hansen,
 7 2012 WL 4049979, at 8 (E.D. Cal. Sept. 13, 2012). “The grounds for objecting to a
 8 request must be stated...and as with other forms of discovery, it is well established that
 9 boilerplate objections do not suffice.” Id. (discussing boilerplate objections asserted in
 10 response to requests for admission).

11 Further, Defendant has included a conditional response in its objection, which
 12 leaves Plaintiffs and the Court guessing as to whether all responsive documents will be
 13 produced. Conditional responses and/or the purported reservation of rights by a
 14 responding party are improper and ultimately have the effect of waiving the objections
 15 to the discovery requests. Sprint Communications Co. v. Comcast Cable Communica-
16 tions, LLC, 2014 WL 545544 at *2 (D. KS 2014)(“Sprint I”), modified 2014 WL
 17 569963 (D. KS 2014)(“Sprint II”). The responses are confusing and misleading
 18 because, for example, when a party responds to an interrogatory that is “subject to” and
 19 “without waiving its objections,” the propounder of the interrogatory is “left guessing
 20 as to whether the responding party has fully or only partially responded to the
 21 interrogatory.” Estridge v. Target Corp., 2012 WL 527051 at *1-2 (S.D. FL 2012).

22 Conditional responses to discovery requests violate Rule 26. Rule 26
 23 (g)(1)(B)(i)-(iii) requires responders to discovery requests to certify that the discovery
 24 responses are consistent with the Rules, “not imposed for any improper purpose,” and
 25 are “neither unreasonable nor unduly burdensome.” Moreover, the 1983 Committee
 26 comments to Rule 26(g) state that “Rule 26 imposes an affirmative duty to engage in
 27 pretrial discovery in a responsible manner that is consistent with the spirit and purposes
 28 of Rule 26 through 37.” Providing conditional responses to discovery requests is

1 improper, the objections are deemed waived, and the response to the discovery request
 2 stands. Sprint II, 2014 WL 1569963 at *3; see also Estridge, 2012 WL 527051 at *2;
 3 citing Tardif v. People for the Ethical Treatment of Animals, 2011 WL 1627165 at *2
 4 (M.D. FL 2011); Pepperwood of Naples Condominium Assn. v. Nationwide Mutual
 5 Fire Ins. Co., 2011 WL 4382104 at *4-5 (M.D. FL 2011); Consumer Elecs. Assn. v.
 6 Compras And Buys Magazine, Inc., 2008 WL 4327253 at *3 (S.D. FL 2008) (“subject
 7 to” and “without waiving objections” “preserve... nothing and serve... only to waste the
 8 time and resources of both the Parties and the Court. Further, such practice leaves the
 9 requesting Party uncertain as to whether the question has actually been fully answered
 10 or whether only a portion of the question has been answered.”)

11 Defendant also objects to this RFP to the extent that it seeks proprietary
 12 information, trade secrets, or information subject to protective orders, confidentiality
 13 agreements, or statutory provisions that bar the disclosure of that information without
 14 the consent of third parties. Like Plaintiffs, the Court is confused that Defendant asserts
 15 an objection to producing information subject to a protective order, when a protective
 16 order was executed in this case more than one year ago, on February 5, 2015. (Doc.
 17 No. 26.)

18 The Court observes that many of Defendant’s responses to Plaintiff’s
 19 discovery requests assert that the requested information is protected by the attorney-client
 20 privilege and/or, work product doctrine. If Defendant cannot reasonably
 21 determine what Plaintiffs are requesting, the Court is befuddled as to how Defendant
 22 can state in good faith that the attorney-client privilege or work product doctrine is
 23 implicated. Further, Defendant has not indicated whether a privilege log has been
 24 produced. To the extent that the response invokes a privilege or work product,
 25 Defendant is required to provide Plaintiffs with a privilege log that lists each document
 26 withheld from production. Fed.R.Civ.P. 26(b)(5)(A)(i)-(ii). A proper assertion of
 27 privilege or work product must contain the following for each document, communica-
 28 tion, or information withheld:

- 1 (1) Date of the creation of the document;
- 2 (2) Author;
- 3 (3) Primary addressee(s) [and the relationship of that person(s) to the client
4 and/or author of the document];
- 5 (4) Secondary addressee(s), persons who received copies of the document and the
6 recipient [and the relationship of that person(s) to the client and/or author of the
7 document];
- 8 (5) Type of document;
- 9 (6) Client (party asserting the privilege)
- 10 (7) Attorneys (with an indication of who the attorney represents);
- 11 (8) Subject matter of the document or privileged communication;
- 12 (9) Purpose of the document or privileged communication (basis for the legal
13 claim of privilege, work product or objection to production);
- 14 (10) Whether the document, communication, or objection is attorney-client
15 privilege, work product, or some other basis;
- 16 (11) Identify each document by number.^{3/}

17 Miller v. Pancucci, 141 F.R.D. 292, 302 (C.D. Cal. 1992); Martin v. Evans, 2012 WL
18 1894219 at *5 (N.D. Cal. 2012); Del Campo v. American Corrective Counseling
19 Services, 2007 WL 4287335 at *4 (N.D. Cal. 2007).

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28 ^{3/} No. 11 was added by this Court.

1 **B. RFP NO. 43**

2 **Request No. 43:** “Produce all of defendant’s policies and procedures
 3 regarding methods used to collect a debt.”

4 **Response to Request No. 43:** “Defendant objects to this Request on the
 5 grounds that the phrases “policies and procedures” and “methods used”
 6 are vague and ambiguous. Defendant objects to this Request on the
 7 grounds that it is overbroad and seeks information which is neither
 8 relevant to the subject matter of this action, nor proportionally tailored to
 9 the reasonable needs of the case. Defendant also objects to this Request
 10 to the extent that it seeks proprietary information, trade secrets, or
 11 information subject to protective orders, confidentiality agreement, or
 12 statutory provisions that bar the disclosure of that information without the
 13 consent of third parties, or information protected by the attorney-client
 14 privilege or the attorney work-product doctrine. There is no “debt” or
 15 “consumer debt” at issue as those terms are defined by 15 U.S.C. §
 16 1692a(5) and California Civil Code §1788.2(f), respectively. Defendant
 17 objects to this Request to the extent that it is duplicative of other Requests
 18 previously responded to by Defendant in this action.”

19 **Plaintiffs’ Argument**

20 Defendant’s employees testified that Defendant uses several methods to
 21 collect, i.e., sending correspondence to the debtor, telephone calls, referral to tax
 22 authorities, and notifying credit bureaus. Plaintiffs have requested to examine those
 23 policies and procedures to determine whether its employees followed them. It is not
 24 clear from the Defendant’s records or deposition testimonies if Defendant sent any
 25 letters to the drivers, to the owner of the cars, or to the Plaintiffs. In addition,
 26 Defendant’s employees testified about sending a letter first and after a certain period
 27 of time would start the collection calls. Defendant has not produced any collection
 28 letters.

29 **Defendant’s Argument**

30 Although Plaintiffs’ originally requested a wide range of documents
 31 concerning how AllianceOne attempts to collect unpaid financial obligations, it is now
 32 clear from their explanation above that Plaintiffs are now seeking documents they did
 33 not request, namely “collection letters.” Regardless, Defendant has produced
 34 documents reflecting its policies and procedures for collecting outstanding financial
 35 obligations. See AO 1-34, 35-42, 43, 61-63, 78-80, 236-238, 239-270, 271-275,

1 276-316, 317-324, 338, 340-341, 342-346, 357-361, 370-375, 381-515, 516-556,
 2 557-570, 571-582, 583-598, 599-614, 615-618, 619-622, 730-734. There is no basis to
 3 compel production.

4 **Court's Ruling on RFP No. 43**

5 Defendant's objection is **SUSTAINED** on the basis of Defendant's specific
 6 objection that, "[t]here is no 'debt' or 'consumer debt' at issue as those terms are
 7 defined by 15 U.S.C. § 1692a(5) and California Civil Code §1788.2(f), respectively."
 8 Logically, if there is no debt as defined by the statutes, then there are no documents to
 9 produce.

10 It does appear, as Defendant argues, that Plaintiffs have readjusted the focus
 11 of their request in their argument to the Court. Although RFP No. 43 explicitly seeks
 12 Defendant's policies and procedures regarding methods used to collect a debt, Plaintiffs
 13 now argue that they seek collection letters. The Court will not compel Defendant to
 14 produce any collection letters, as this is not what Plaintiffs initially requested. Further,
 15 Defendant states that it produced documents reflecting its policies and procedures for
 16 collecting outstanding financial obligations.

17 While Defendant's objection to RFP No. 43 is sustained on the sole basis
 18 explained above, the remainder of Defendant's objections to this RFP are **OVER-**
 19 **RULED**. Once again, Defendant has provided a catalogue of boilerplate objections,
 20 noting that this request is vague, ambiguous, overbroad, duplicative, and seeks
 21 irrelevant information. Defendant also objects to this request to the extent that it seeks
 22 proprietary information, trade secrets, or information subject to protective orders, but
 23 as already stated, there is a protective order in place in this case. (Doc. No. 26.)

24 Finally, Defendant objects that Plaintiffs have requested information protected
 25 by the attorney-client privilege and/or, work product doctrine, but has failed to indicate
 26 whether a privilege log has been produced. To the extent that the responses invoke a
 27 privilege or work product, Defendant is required to provide Plaintiffs with a privilege
 28 log that lists each document withheld from production. Fed.R.Civ.P. 26(b)(5)(A)(i)-(ii).

1 **C. RFP NO. 46**

2 **Request No. 46:** “Produce all of defendant’s policies and procedures to
3 conduct skip trace.”

4 **Response to Request No. 46:** “Defendant objects to this Request on the
5 grounds that the phrase “conduct skip trace” is vague and ambiguous.
6 Defendant further objects to this Request on the grounds that it seeks
7 information that is neither relevant to the subject matter of the action, nor
8 proportionally tailored to the reasonable needs of the case. Defendant also
9 objects to this Request to the extent that it seeks proprietary information,
10 trade secrets, or information subject to protective orders, confidentiality
11 agreements, or statutory provisions that bar the disclosure of that
12 information without the consent of third parties, or information protected
13 by the attorney-client privilege or the attorney work-product doctrine.
14 Defendant objects to this Request to the extent that it is duplicative of
15 other Requests previously responded to by Defendant in this action.”

16 **Plaintiffs’ Argument**

17 Plaintiffs are requesting information regarding Defendant’s policies and
18 procedure to conduct investigation to determine the identity of the proper debtor,
19 debtor’s address, telephone number, and date of birth. In this case, all three traffic
20 tickets were issued to completely different individuals. Apparently, Defendant’s
21 employees conducted investigation and skip trace to find Plaintiff’s telephone numbers,
22 date of birth, addresses, and social security number.

23 **Defendant’s Argument**

24 As Plaintiffs’ explanation above makes clear, Defendant’s objection that this
25 Request is vague and ambiguous is well-taken. Plaintiffs now explain that they seek
26 information regarding how Defendant determines “the identity of the proper debtor,
27 debtor’s address, telephone number, and date of birth.” Regardless, Defendant has
28 produced responsive documents. See AO 1-34, 35-42, 64-67, 68-7, 239-270, 271-275,
29 365-369, 377-380, 544-556, 583-598, 599-614, 615-618, 619-622, 623-626, 735-736,
30 737-744. There is no basis to compel production.

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1 **Court's Ruling on RFP No. 46**

2 Defendant's objection is **OVERRULED**. Once again, Defendant has
 3 provided a catalogue of boilerplate objections, including noting that this request is
 4 vague, ambiguous, overbroad, duplicative, and seeks irrelevant information. The
 5 phrase "conduct skip trace" is not vague and ambiguous, as Defendant argues. Even
 6 though Defendant was not collecting a debt, but a judgment, there is a similarity in the
 7 methods and procedures in attempting to collect either. "Skip trace" is a common term
 8 in the debt collection services industry and has a common meaning of which Defendant
 9 undoubtedly is knowledgeable.

10 Further, Defendant once again objects to this request to the extent that it seeks
 11 proprietary information, trade secrets, or information subject to protective orders, but
 12 there is a protective order in place. (Doc. No. 26.) Defendant also objects that
 13 Plaintiffs have requested information protected by the attorney-client privilege and/or,
 14 work product doctrine, but has failed to indicate whether a privilege log has been
 15 produced.

16 **D. RFP NO. 52**

17 **Request No. 52:** "Produce all of defendant's employee training manuals
 18 regarding the investigation of a debt."

19 **Response to Request No. 52:** "Defendant objects to this Request on the
 20 grounds that the phrase "the investigation of a debt" is vague and
 21 ambiguous. Defendant objects to this Request on the grounds that it is
 22 overbroad and seeks information that is neither relevant to the subject
 23 matter of this lawsuit, nor proportionally tailored to the reasonable needs
 24 of the case. There is no "debt" or "consumer debt" at issue as that term is
 25 defined by 15 U.S.C. § 1692a(5) and California Civil Code §1788.2(f),
 respectively. Defendant also objects to this Request to the extent that it
 seeks proprietary information, trade secrets, or information subject to
 protective orders, confidentiality agreements, or statutory provisions that
 bar the disclosure of that information without the consent of third parties,
 or information protected by the attorney-client privilege or the attorney
 work-product doctrine. Defendant objects to this Request to the extent that
 it is duplicative of other Requests previously responded to by Defendant
 in this action."

26 **Plaintiffs' Argument**

27 Plaintiffs are asking for any training employee have received on how to
 28 conduct investigation to find the proper name, address, date of birth, and telephone

1 numbers of a person. Defendant uses several data bases and companies to conduct
 2 investigation. Further, Defendant has contracts with credit reporting agencies so
 3 Defendant could search credit bureaus' computer systems.

4 **Defendant's Argument**

5 As Plaintiffs' explanation above makes clear, Defendant's objection that this
 6 Request is vague and ambiguous is well-taken. Plaintiffs initially requested information
 7 regarding "the investigation of a debt." Now, however, they explain that they seek
 8 information regarding how Defendant investigates the "name, address, date of birth,
 9 and telephone numbers of a person." Regardless, Defendant has produced responsive
 10 documents. See AO 1-34, 64-67, 68-71, 81-84, 271-275, 357-361, 516-528, 529-543
 11 and 544-556. There is no basis to compel production.

12 **Court's Ruling on RFP No. 52**

13 Defendant's objection is **SUSTAINED** on the basis that Defendant objects
 14 that "[t]here is no 'debt' or 'consumer debt' at issue as that term is defined by 15 U.S.C.
 15 § 1692a(5) and California Civil Code §1788.2(f), respectively. It does appear, as
 16 Defendant argues, that Plaintiffs have readjusted the focus of their request in their
 17 argument to the Court. Although RFP No. 52 explicitly seeks Defendant's employee
 18 training manuals regarding the investigation of a debt, Plaintiffs now argue that they
 19 seek information related to any training that employees have received on how to
 20 conduct an investigation to find names, addresses, dates of birth, and telephone
 21 numbers. The Court will not compel Defendant to produce the information, as this is
 22 not what Plaintiffs initially requested.

23 While Defendant's objection to RFP No. 52 is sustained on the sole basis
 24 explained above, the remainder of Defendant's objections to this RFP are **OVER-**
 25 **RULED**. Once again, Defendant has provided a list of boilerplate objections, noting
 26 that this request is vague, ambiguous, overbroad, duplicative, and seeks irrelevant
 27 information. Defendant also objects to this request to the extent that it seeks
 28 proprietary information, trade secrets, or information subject to protective orders,

despite there being a protective order in place. (Doc. No. 26.) Defendant objects that Plaintiffs have requested information protected by the attorney-client privilege and/or, work product doctrine, but has failed to indicate whether a privilege log has been produced.

E. RFP NO. 63

Request No. 63: "Please produce any and all DOCUMENTS YOU reviewed, referred to, or relied upon when preparing YOUR Rule 26 Disclosures."

Response to Request No. 63: "Defendant objects to this request on the grounds that it is vague and ambiguous, overbroad, and overly burdensome. Defendant further objects to this Request on the grounds that it seeks information that is neither relevant to the subject matter of the action, nor proportionally tailored to the reasonable needs of the case. Defendant also objects to this Request to the extent that it seeks proprietary information, trade secrets, or information subject to protective orders, confidentiality agreements, or statutory provisions that bar the disclosure of that information without the consent of third parties, or information protected by the attorney-client privilege or attorney work-product doctrine. Defendant objects to this Request to the extent that it is duplicative of other Requests previously responded to by Defendant in this action."

Plaintiffs' Argument

On November 6, 2014, Defendant served its Initial Disclosure pursuant to FRCP Rule 26(a)(1). However, Defendant did NOT produce any documents. Defendant stated, The following categories of documents are in the possession, custody or control of Defendant and may be used by Defendant to support its case:

- (1) Document relating to the accounts at issue,
- (2) Documents relating to Defendant's attempts to collect the accounts at issue,
- (3) Documents related to Defendant's communications with plaintiffs,
- (4) Documents relating to the Underlying Actions,
- (5) Documents relating to Defendant's policies and procedures,
- (6) Documents supporting Defendant's affirmative defenses,
- (7) Plaintiffs' federal and state income tax returns,
- (8) Plaintiffs' credit reports, and
- (9) All documents identified and produced by Plaintiffs.

On November 6, 2014, Defendant asserted that it had in its possession and control Plaintiffs' federal and state income tax returns, and Plaintiffs' credit reports. Plaintiffs want to see these documents and how Defendant obtained those documents before any discovery was done in this case. Additionally, Defendant claimed to have

1 documents relating to this account and its attempts to collect the accounts. Defendant
 2 has not produced any collection letters it sent to the drivers, owner of the cars, and
 3 plaintiffs. Defendant has not produced the dialor-log (log of the every call, date, time,
 4 and telephone numbers) of all collection telephone calls it has made to the drivers, the
 5 owner of the cars, and to the Plaintiffs. Clearly Defendant has these documents, but it
 6 has failed to produce them.

7 **Defendant's Argument**

8 Once again, Plaintiffs deviate from the language of their request in the
 9 explanation they offer as to why production should be compelled.⁴ Defendant was only
 10 required to identify information it “may use to support its . . . defenses.” Plaintiffs now
 11 focus on Defendant’s reference to their “federal and state income tax returns” and their
 12 “credit reports,” and “want to see . . . how Defendant obtained those documents before
 13 any discovery was done in this case.” Plaintiffs’ desire to learn how Defendant may
 14 have obtained documents is not the proper subject of a document request. The statement
 15 that Plaintiffs’ tax returns were within Defendant’s possession, custody, or control was
 16 a mistake. Defendant did not then possess such documents, but rather anticipated that
 17 it might rely on such documents to defend itself. Regarding Defendant’s reference to
 18 Plaintiffs’ credit reports, however, certain such documents were in its possession when
 19 it served its Initial Disclosures, because Plaintiffs mailed copies of their credit reports
 20 to Defendant on or about November 19, 2012, almost a year before they filed their
 21 complaint, on November 5, 2013. In any event, Defendant has produced all of the
 22 documents it identified in its Initial Disclosures. See AO 1-747. There is no basis to
 23 compel production.

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 27 ⁴ As a threshold matter, Defendant was not obligated to produce documents when it
 28 served its Initial Disclosures. *See Fed. R. Civ. P. 26(a)(1)(A)(i).* (Doc. No. 67 at 8, n.
 1.)

1 **Court's Ruling on RFP No. 63**

2 Defendant's objection is **SUSTAINED**. While still crowded with boilerplate
 3 language, Defendant's objection to RFP No. 63 differs from the other disputed
 4 responses in that Defendant claims this request is also overly burdensome. The Court
 5 agrees that RFP No. 63 is unduly burdensome. While preparing its initial disclosures,
 6 Defendant may have reviewed, referred to, or relied upon a voluminous amount of
 7 documents that turned out to be irrelevant to this case. Defendant now represents that
 8 it has produced all documents listed in its initial disclosures, and that it erroneously
 9 stated in its initial disclosures that it possessed copies of Plaintiffs' tax returns.
 10 Moreover, Plaintiffs appear to alter their request in their subsequent argument to the
 11 Court, stating that they want to know how Defendant obtained copies of Plaintiffs' tax
 12 returns and credit reports prior to discovery. This RFP does not ask for documents that
 13 demonstrate how Defendant obtained the documents listed in its initial disclosures.

14 While the Court finds Defendant's objection on overly burdensome grounds
 15 to be valid, it is disturbed by Defendant's failure to provide proper justification for its
 16 objections in its RFP response. If Defendant had simply justified its objections in its
 17 RFP response, it is likely that this dispute could have been avoided.

18 Defendant also objects to this request to the extent that it seeks information
 19 subject to a protective order and attorney-client privilege and/or, work product doctrine
 20 information. As explained in detail above, these objections are not valid.

21 **F. RFP NO. 65**

22 **Request No. 65:** Please produce all credit reports YOU have obtained
 23 from Credit Reporting Companies regarding plaintiffs.

24 **Response to Request No. 65:** "Defendant objects to this Request on the
 25 grounds that it is overbroad and burdensome. Defendant objects to this
 26 Request on the grounds that the phrase "credit report" and "credit
 27 reporting companies" are vague and ambiguous. Defendant further objects
 28 to this Request on the grounds that it seeks information that is neither
 relevant to the subject matter of the action, nor proportionally tailored to
 the reasonable needs of the case. Defendant also objects to this Request
 to the extent that it seeks proprietary information, trade secrets, or
 information subject to protective orders, confidentiality agreements, or
 statutory provisions that bar the disclosure of that information without the
 consent of third parties, or information protected by the attorney-client

privilege or the attorney work-product doctrine. Defendant objects to this Request to the extent that it is duplicative of other Requests previously responded to by Defendant in this action. Subject to and without waiving the foregoing, Defendant responds as flows: Defendant did not obtain any credit reports regarding Plaintiffs, as it understand the phrase “credit reports.”

Plaintiffs’ Argument

Defendant in its Initial Disclosure stated that it has credit reports in its possession, custody, and control. Additionally, Defendant has produced contracts with Experian and TransUnion which allow Defendant to access these credit bureaus’ data bases and search credit information about debtors. Defendant obtained Plaintiffs’ social security number, telephones numbers, address, and work information. Defendant used the social security number to refer the matter to California Franchise Tax Board and as a result, Plaintiffs’ federal income tax refund was seized.

Defendant’s Argument

As Plaintiffs’ explanation above makes clear, Defendant’s objection that this Request is vague and ambiguous, as to the phrase “credit report,” is well-taken. Plaintiffs now appear to seek information reflecting that Defendant “obtained Plaintiffs’ social security number, telephone numbers, address [sic], and [undefined] work information” from the credit reporting agencies. But this is not a “credit report” within the meaning prescribed by the Fair Credit Reporting Act. See 15 U.S.C. § 1681a(d) (“The term ‘consumer report’ means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for” credit or other enumerated purposes). The fact that Defendant contracts with credit reporting agencies to obtain “information about debtors” does not prove Defendant obtained either Plaintiff’s credit report, nor is there any evidence that Defendant pulled the credit report of either of the Plaintiffs, as defined under the Act. As noted above,

1 the credit reports in Defendant's possession when it served its Initial Disclosures were
 2 provided to Defendant by Plaintiffs. Defendant clearly stated in its response that it did
 3 not obtain any credit reports concerning Plaintiffs from the credit reporting agencies.
 4 There is no basis to compel production.

5 **Court's Ruling on RFP No. 65**

6 Defendant's objection is **OVERRULED**. Defendant shall produce all credit
 7 reports that it has received from the credit reporting companies, as explicitly requested
 8 in RFP No. 65. If Defendant did not obtain any of Plaintiffs' credit reports from the
 9 credit reporting agencies, it shall clearly state that in its RFP response.

10 Defendant's objection that the use of the phrases "credit report" and "credit
 11 reporting agencies" are vague and ambiguous is not well-taken by the Court.
 12 Defendant used the exact phrase, "credit reports," in itemizing its initial disclosures.
 13 Certainly Defendant did not believe that its own use of the phrase "credit report" was
 14 vague or ambiguous because it would not have used it if it had. In its argument for RFP
 15 No. 63 in the Joint Motion, Defendant states, "Regarding Defendant's reference to
 16 Plaintiffs' credit reports, however, certain such documents were in its possession when
 17 it served its Initial Disclosures, because Plaintiffs mailed copies of their credit reports
 18 to Defendant on or about November 19, 2012, almost a year before they filed their
 19 complaint, on November 5, 2013." (Doc. No. 67 at 9.) The Court is at a loss to
 20 understand how Defendant could use the disputed phrases in its own initial disclosures
 21 and Joint Motion argument, yet make a good faith objection that the same phrases are
 22 vague and ambiguous when used by Plaintiffs. Defendant is simply playing games by
 23 asserting this objection, and its response violates the spirit of Rule 26.

24 **G. RFP NO. 66**

25 **Request No. 66:** "Please produce all skip-trace done in this matter."

26 **Response to Request No. 66:** "Defendant objects to this Request on the
 27 grounds that the phrase "skip-trace" is vague and ambiguous. Defendant
 28 objects to this Request on the grounds that it is overbroad. Defendant further objects to this Request on the grounds that it seeks information that is neither relevant to the subject matter of the action, nor proportionally tailored to the reasonable needs of the case. Defendant also objects to this

1 Request to the extent that it seeks proprietary information, trade secrets,
2 or information subject to protective orders, confidentiality agreements, or
3 statutory provisions that bar the disclosure of that information without the
4 consent of third parties, or information protected by the attorney-client
privilege or the attorney work-product doctrine. Defendant objects to this
Request to the extent that it is duplicative of other Requests previously
responded to by Defendant in this action. Subject to and without waiving
the foregoing, Defendant will produce non-privileged business records in
its possession, custody or control, responsive to this Request, that are
relevant to the claims and defenses in this lawsuit and that have not
previously been produced.”

7 **Plaintiffs' Argument**

8 For the reason stated above, if Defendant has done any investigation to find
9 the information about the drivers, owner of the cars, or Plaintiffs, then those documents
10 should be produced. Plaintiffs are asking for all the investigations done and the results
11 of those investigations.

12 **Defendant's Argument**

13 Once again, as Plaintiffs’ explanation above makes clear, Defendant’s
14 objection that this Request is vague and ambiguous is well-taken. Plaintiffs nebulously
15 asked Defendant to produce “all skip-trace.” Now, however, they seek “the investiga-
16 tions done and the results of those investigations.” Regardless, Defendant has produced
17 responsive documents. See AO 85-99. There is no basis to compel production.

18 **Court's Ruling on RFP No. 66**

19 Defendant’s objection is **OVERRULED**. Once again, Defendant has
20 provided a litany of boilerplate objections, noting that this request is vague, ambiguous,
21 overbroad, duplicative, and seeks irrelevant information. As already discussed in this
22 Order, the phrase “skip trace” is not vague and ambiguous. “Skip trace” is a common
23 phrase in the debt collection services industry, and Plaintiffs are asking for all skip-
24 trace done in this matter only.

25 Defendant also objects to this request to the extent that it seeks proprietary
26 information, trade secrets, or information subject to protective orders, or protected by
27 the attorney-client privilege and/or, work product doctrine, but has failed to indicate
28 whether a privilege log has been produced.

1 Finally, Defendant has included a conditional response in its objection, which
 2 leaves Plaintiffs and the Court guessing as to whether all responsive documents will be
 3 produced. Conditional responses and/or the purported reservation of rights by a
 4 responding party are improper.

5 **H. RFP NO. 67**

6 **Request No. 67:** Please produce all skip-trace done regarding traffic
 7 tickets 78781HT, 84807KQ, and 18717JH.”

8 **Response to Request No. 67:** “Defendant objects to this Request on the
 9 grounds that the phrase “skip-trace” is vague and ambiguous. Defendant
 10 objects to this Request on the grounds that it is overbroad. Defendant
 11 further objects to this Request on the grounds that it seeks information that
 12 is neither relevant to the subject matter of the action, nor proportionally
 13 tailored to the reasonable needs of the case. Defendant also objects to this
 14 Request to the extent that it seeks proprietary information, trade secrets,
 15 or information subject to protective orders, confidentiality agreements, or
 16 statutory provisions that bar the disclosure of that information without the
 17 consent of third parties, or information protected by the attorney-client
 18 privilege or the attorney work-product doctrine. Defendant objects to this
 19 Request to the extent that it is duplicative of other Requests previously
 20 responded to by Defendant in this action. Subject to and without waiving
 21 the foregoing, Defendant will produce non-privileged business records in
 22 its possession, custody or control, responsive to this Request, that are
 23 relevant to the claims and defenses in this lawsuit and that have not
 24 previously been produced.”

25 **Plaintiffs’ Argument**

26 Please see the reason to Request No. 66.

27 **Defendant’s Argument**

28 Once again, as Plaintiffs’ explanation above makes clear, Defendant’s
 1 objection that this Request is vague and ambiguous is well-taken. Plaintiffs nebulously
 2 asked Defendant to produce “all skip-trace.” Now, however, they seek “the investiga-
 3 tions done and the results of those investigations.” Regardless, Defendant has produced
 4 responsive documents. See AO 85-99. There is no basis to compel production.

5 **Court’s Ruling on RFP No. 67**

6 Defendant’s objection is **OVERRULED**. Defendant has provided nothing but
 7 boilerplate objections, noting that this request is vague, ambiguous, overbroad,
 8 duplicative, and seeks irrelevant information. The phrase “skip trace” is not vague and
 9 ambiguous, but rather, is a common phrase in the debt collection services industry.

1 Defendant argues that “Plaintiffs nebulously asked Defendant to produce ‘all skip-
2 trace.’” Plaintiffs clearly asked for all skip-trace done regarding the three traffic tickets
3 at issue in this litigation.

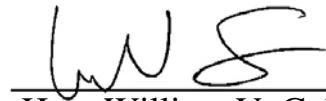
4 Defendant’s objections related to the protective order, privileges, and its
5 conditional responses, are unsupported and improper.

6 **III. CONCLUSION**

7 Defendant shall produce any remaining responsive documents and any
8 privilege log on or before close of business on April 4, 2015.

9 IT IS SO ORDERED.

10 DATED: March 28, 2016

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12 _____
13 Hon. William V. Gallo
U.S. Magistrate Judge

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